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of process. *Held*, that the plaintiff may recover. *Malone* v. *Belcher*, 103 N. E. 637 (Mass.).

Malicious abuse of process is defined as the employment of legal process for a purpose not designed by law. See COOLEY ON TORTS, 2 ed., p. 220. Under this broad definition any suit brought maliciously would be malicious abuse of process. The action must be more restricted. Two elements would seem essential: an ulterior motive, and an act in the use of process not proper in the proceeding. *Jeffery* v. *Robbins*, 73 Ill. App. 353; see *Pittsburg, etc. R. R.* v. *Wakefield Hardware Co.*, 143 N. C. 54, 58, 55 S. E. 422, 424. It may be admitted that the wrong is as great in the principal case, where the ulterior motive, the prevention of the sale, is accomplished by the mere attachment, as in cases where a further act is done. But the right to use the machinery of the law to enforce a valid claim is a right so absolute that bad motive will not remove the justification. *Docter* v. *Riedel*, 96 Wis. 158, 71 N. W. 119. So where a bankruptcy petition was presented by the defendant, on a valid act of bankruptcy, no action arises, though his sole motive was to exclude the plaintiff from a partnership. *King* v. *Henderson* [1898], A. C. 720. The moment, however, the defendant does some act beyond the process, such as coercing the plaintiff to do something which has no reference to the proceeding, his justification fails, and an action lies. *Graingee* v. *Hill*, 4 Bing. (N. C.) 212. As there was no further act in this case, it fails as an action for abuse of process. *Ludwick* v. *Penny*, 158 N. C. 104, 73 S. E. 228. Nor can the action be maintained as for malicious prosecution. The elements for such an action are malice, want of probable cause, and generally termination of the prior action. Termination of the prior action must be shown wherever the issue involved therein is material in the present suit. The possibility of inconsistent results and the objection of trying a pending issue collaterally require this. In jurisdictions where the process of attachment is restricted to cases of fraud, the issue in the prior action need not be raised, and no termination is necessary. *Fortman* v. *Rottier*, 8 Oh. St. 550; *Brand* v. *Hinchman*, 68 Mich. 590, 36 N. W. 664. But in Massachusetts the requirements for attachment are merely the same as those in the principal action itself. Thus the issue in the principal suit is necessarily involved in the malicious prosecution suit, and termination must be shown. *Wilson* v. *Hale*, 178 Mass. 111, 59 N. E. 632.

MASTER AND SERVANT — DUTY OF MASTER TO PROVIDE SAFE APPLIANCES — PREMISES LEASED BEFORE INJURY BUT WITHOUT SERVANT'S KNOWLEDGE. — The plaintiff's intestate, while employed about the defendant's coal docks, was injured by a defective appliance. Prior to the accident the defendant had leased the docks to another, but this fact was unknown to the plaintiff's intestate. *Held*, that the defendant is liable. *Benson* v. *Lehigh Valley Coal Co.*, 144 N. W. 774 (Minn.).

An employer's duty to furnish safe appliances, whether it sounds in contract or in tort, grows out of the relationship of master and servant. See 3 LABATT, MASTER AND SERVANT, § 898. Since a man cannot avoid his contractual liabilities by disposing of his business, (*Perry* v. *Simpson, etc. Co.*, 37 Conn. 520) if the employer be considered as impliedly contracting to furnish safe appliances, the fact of the lease should not discharge that liability. If the duty is in tort, the same result follows. The fact of the relationship creates the duty. See *Ford* v. *Fitchburg R. Co.*, 110 Mass. 240, 260. And as long as the service continues, the employer must fulfill that duty. That the service did continue in the principal case seems clear. If the relation is merely consensual, it should terminate only on notification. If it is considered contractual, some courts even require express or implied consent. See *Missouri R. Co.* v. *Ferch*, 18 Tex. Civ. App. 46, 49; 44 S. W. 317, 319. But the better view is that dismissal alone terminates the service relation, although the

contractual obligations, such as to pay wages, continue unless ended by mutual consent. *Champion* v. *Hartshorne*, 9 Conn. 564. At any rate, notice of some kind is essential. The principal case is supported by the weight of authority. Delaware, *L. & W. R. Co.* v. *Hardy*, 59 N. J. L. 35, 34 Atl. 986. *Missouri R. Co.* v. *Ferch, supra.* See *Solomon R. Co.* v. *Jones*, 30 Kan. 601, 603, 2 Pac. 657, 658. But there are some decisions *contra*. *Crusselle* v. *Pugh*, 67 Ga. 430. *Smith* v. *Belshaw*, 89 Cal. 427, 26 Pac. 834. It is no hardship that the defective appliances are without the defendant's control, for he can avoid all liability by simply notifying the servant. The principle of estoppel is not involved. See *Missouri R. Co.* v. *Ferch, supra.*

NEGLIGENCE — DUTY OF CARE — TRESPASSERS: TRESPASSING CHILDREN ON RAILROAD TRACK. — The plaintiff, an infant of seven years, while trespassing on the tracks of the defendant railroad, was run down by an engine. The lower court directed a nonsuit on the ground that the defendant owed an infant "no higher degree of care than it owed anybody else who was wrongfully on its right of way." *Held*, that this is error. *Piepke* v. *Philadelphia & Reading R. Co.*, 89 Atl. 124 (Pa.).

It does not appear that the plaintiff's presence was observed. If it was not, a nonsuit was proper, for there is no duty in Pennsylvania to look for trespassers. *Philadelphia & Reading R. Co.* v. *Hummell*, 44 Pa. 375; *Brague* v. *Northern Central Ry. Co.*, 192 Pa. 242, 43 Atl. 987. On the supposition that the plaintiff was seen, according to the Pennsylvania cases, the proprietor's only duty would be to refrain from inflicting wilful or wanton injury. *Little Schuylkill Navigation R. Co.* v. *Norton*, 24 Pa. 465; *Mulherrin* v. *Delaware, etc. R. Co.*, 81 Pa. 366. (For a clear statement of this rule, see *Maynard* v. *Boston & Maine R.*, 115 Mass. 458; also article by Judge Peaslee, 27 HARV. L. REV. 403.) See *Philadelphia & Reading R. Co.* v. *Hummell, supra*, 379; *Pennsylvania R. Co.* v. *Morgan*, 82 Pa. 134, 141. But the reasoning of the principal case might lead one to believe that mere negligence would impose liability where the trespasser was an infant, while wilful or wanton conduct was necessary in case he was an adult. This is not so on principle, or authority, as is shown by cases in the same jurisdiction. *Cauley* v. *Pittsburgh, etc. Ry. Co.*, 95 Pa. 398; *Moore* v. *Pennsylvania R. Co.*, 99 Pa. 301. See *Emerson* v. *Peteler*, 35 Minn. 481, 484; also article by Judge Smith, 11 HARV. L. REV. 349, 367. The proper analysis would seem to be that the trespasser's capacity is merely one fact bearing upon whether the defendant's conduct was wanton or wilful. However, the court says, following *Philadelphia & Reading R. Co.* v. *Spearen*, 47 Pa. 300, 304, if an adult be seen on the track, it would not be wanton conduct not to stop the train, because it may be assumed he will remove himself from danger; but if a child trespasser be seen, the train ordinarily should be stopped immediately. But see *Pennsylvania R. Co.* v. *Morgan, supra*, 141. Accordingly, the court's result, that a jury should be allowed to pass on the evidence, seems supportable.

PARDON — CONDITIONAL PARDON OR PAROLE — STATUTE GIVING COURT POWER TO GRANT. — The petitioner was legally convicted and sentenced to six months' imprisonment. Under a statute authorizing courts to parole prisoners "upon such conditions and under such restrictions" as they "might see fit to impose," the trial court released him, on the condition, among others, that he make reports of his conduct at stated intervals for two years. More than six months later he broke the conditions. *Held*, that the court had no power to recommit him. *In re Welch*, 137 Pac. 975 (Kan.).

Some courts apparently regard it as legally impossible to subject a paroled convict to the restraints of his parole after his term of imprisonment should have expired if served. *Woodward* v. *Murdock*, 124 Ind. 439, 24 N. E. 1047;